IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

CRP.No. 629 of 2007()

CMA.29/2005 of PRINCIPAL SUB COURT,PARAVUR
OS.187/2003 of MUNSIFF COURT, PARAVUR
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REVN. PETITIONER/APPELLANT/DEFENDANT:

NARAYANAN, AGED 48 YEARS, S/O. KUTTAPPAN NAIR, MEKKARA KANYADATHU HOUSE, MUPPATHADAM KARA, KADUNGALLOOR VILLAGE, PARAVUR.

BY ADV. SRI.K.A.SREEJITH
SRI.V.V.SADANANDAN (SREEMOOLANAGARAM)

RESPONDENT/RESPONDENTS/ PLAINTIFF:

PUSHPALATHA, AGED 42 YEARS, W/O. ADAM BABU, KURUPPASSERY HOUSE, CHANGAMPUZHA NAGAR, EDAPPALLY, KANAYANNUR TALUK.

BY ADV. SRI.RAJESH VIJAYAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP 1686 OF 2007
IN
C.R.P. NO.629 OF 2007

DISMISSED

10/10/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 629 OF 2007

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Dated this the 10th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Subordinate Judge, North Paravur in CMA 29/05 thereby he confirmed the order of the Munsiff, North Paravur in I.A.289/04 in O.S.187/03. The revision petitioner is the defendant in the suit and an exparte order has been passed against him whereby a decree for mandatory injunction to remove the new shed constructed by him was passed. The plaintiff was also given a decree for permanent injunction from trespassing into the plaint schedule property.

2. With a delay of 160 days he filed an application for setting aside the exparte decree on the ground that he has no notice of the suit and therefore the decree passed has to be interfered with and an opportunity has to be given to him. The Court below stated that the defendant had refused notice and that he had also refused to receive notice when

tendered by the Commissioner at the time of inspection and therefore held that there is no ground to set aside the exparte decree and dismissed the application. The decree that is granted in the suit is for a mandatory injunction and valuable rights of the parties are involved in the case. This Court in the decision reported in ***Sreedhara Kurup v. Mickel (1968 KLT 599)*** and later in the decision reported in ***Plantation Corporation of Kerala Ltd. v. Hussain (1998 (1)KLT 1008)*** had considered the questions regarding the sufficient cause for setting aside an exparte decree. The principles of natural justice always demands a fair hearing of the parties before the matter is disposed of. This Court has cautioned that if there is a gross negligence and grave mis-conduct the discretionary power should not be exercised liberally. This Court also held that if an application is moved within the time and if interest is shown in proceeding with the matter and some evidence is let in, an opportunity should be given and the difficulty occasioned to the other side can be compensated by ordering costs. A very valuable right of

immovable property is involved, there is no inordinate delay and he wants to prosecute the matter and therefore to comply with the broad principles of natural justice I am inclined to grant an opportunity to the revision petitioner to contest the case on merits but for the laches he must be directed to pay or deposit the costs to the other side. Therefore, the C.R.P. is allowed and the exparte order is set aside on condition that the revision petitioner deposits a sum of Rs.1,500/- as costs to the other side before the trial court within a period of one month. If the amount is deposited, then the Court is directed to set aside the exparte decree, restore the suit back to file and then dispose of the matter in accordance with law. If the amount is not paid within the time stipulated the CMA shall stand dismissed.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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